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## RECENT IMPORTANT DECISIONS.

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ADVERSE POSSESSION—POSSESSION OF ONE JOINT-TENANT AS POSSESSION OF ALL.—Action to recover lands; plaintiff claiming by conveyances from the admitted owner, defendants claiming by prescription. More than thirty years ago defendant Camors and three others, now dead, purchased the land in dispute from one having no title and associated themselves into an unincorporated fishing club. From time to time new members were admitted and old members dropped out. At the time of suit there were nine members, of whom Camors alone had been in possession the statutory period. The nine defendants base their claim to title by adverse possession upon the occupancy of Camors. *Held*, "The actual possession by Camors of an undivided interest in the property is a physical impossibility. His possession was necessarily of the whole premises for account of himself and his cotenants." *Chef Menteur Land Co. Ltd. v. Mercier* (La. 1911), 57 South. 329.

Entry and possession by one of several joint tenants enures to the benefit of all. *WASHBURN, REAL PROP.* (6th ed.), § 858. While the exact facts involved in the principal case seem seldom to have come before the courts, the principle upon which the decision is based is well established. Possession of one of several cotenants is the possession of all. *Waring v. Crow*, 11 Cal. 367; *Brown v. Graham*, 24 Ill. 628; *Wilson v. Peele*, 78 Ind. 384; and this although there is no agreement between them, *Wiswall v. Wilkins*, 5 Vt. 87. The rule is the same whether they be joint tenants or tenants in common, 17 AM. & ENG. ENCY. LAW, 669. While in these cases the controversy was between the cotenants, the rule is the same when applied to the facts in the principal case.

BANKRUPTCY—MANNER OF CLAIMING EXEMPTIONS—CONSTRUCTION OF PROVISIONS RELATING TO EXEMPTIONS.—The partnership of Andrews & Simonds was adjudged an involuntary bankrupt. Simonds filed partnership schedules claiming exemptions under § 10322 of MICHIGAN COMP. LAWS OF 1897, which provides for the exemption of "tools, implements, materials, stock \* \* \* or other things to enable any person to carry on the profession \* \* \* or business in which he is engaged, not exceeding \$250.00 in value." No further claim for exemption nor specification of exempt property was ever made. After an authorized and confirmed sale of the partnership property by the trustee, without notice to the bankrupt or further request to specify exemptions, he filed a petition for payment to him of \$250.00 out of the proceeds of such sale as his exemption. *Held*, that the exemption provisions of the Bankruptcy Act are to be liberally, not strictly, construed, and that as nowhere in the Act or forms, except in the caption to Schedule B (5), is the bankrupt required to specify the articles in which he claims his exemption, if he has clearly indicated his intention not to waive his exemption, as here, and has also specified the particular class out of which he claims it, it then becomes the duty of the trustee to select and sever the exempt property from the mass of property, and in the class indicated. Here this being omitted without fault of the bank-

rupt, he is entitled to his exemption out of the proceeds of the sale. *In re Andrews & Simonds* (1911), 27 A. B. R. 116.

The bankruptcy act allows to the bankrupt the exemption provided by the law of the State of his domicile. BRANDENBURG, BANKRUPTCY, Ed. 3, § 182; LOVELAND, BANKRUPTCY, §§ 177 and 177-a; COLLIER, BANKRUPTCY, Ed. 8, pp. 134-143; REMINGTON, BANKRUPTCY, 1910 Supp., § 1038. But the manner in which the exemption is to be claimed, set apart and awarded, is regulated by the Bankruptcy Act and the general orders and forms applicable thereto. COLLIER, Ed. 8, p. 142 and citations; *In re Lucius*, 10 A. B. R., 653; *In re Friedrich*, 100 Fed. 284; *In re Groves*, 6 A. B. R. 728; *In re McClintock*, 13 A. B. R. 606; REMINGTON, § 1048 and citations. The question for determination here, then, namely; with what particularity must the articles comprising the exemption be specified, must be answered from the construction of the Bankruptcy Act itself. The only express provision of the Act, general orders or forms, directly imposing a duty upon the bankrupt himself, is § 7a (8): "Duties of Bankrupts—(a) The bankrupt shall \* \* \* (8) prepare, make oath to and file in court \* \* \* a schedule of his property showing the amount and kind of property \* \* \* (itemized) \* \* \* and claim for such exemptions as he may be entitled to \* \* \*" As modified by the caption to general form, Schedule B (5): "A particular statement of the property claimed as exempt from the operation of the acts of Congress relating to bankruptcy, *giving each item of property* and its valuation, and, if any portion of it is real estate, its location, description and present use." The provisions imposing a duty upon the trustee are § 47a (11) of the Bankruptcy Act, requiring the trustee to "set apart the bankrupt's exemptions and report the items and estimated value thereof to the court \* \* \*" and general order XVII providing that "A trustee shall make report to the court within twenty days after receiving notice of his appointment, of the articles set off to the bankrupt by him, according to the provisions of the 47th section of the Act, with estimated value of each article." Thus, "it is made the duty of the bankrupt to claim such exemptions as he may be entitled to in his schedule." LOVELAND, Ed. 3, p. 533; or by amendment to his schedule, LOVELAND, p. 525; COLLIER, p. 147; *In re Maxson*, 170 Fed. 356, and it is the duty of the trustee to set apart the exemptions and report the *items* to the court within twenty days. LOVELAND, p. 533 and citations. It is a settled rule that if no claim whatever for exemption is made within the proper time that right is waived. LOVELAND, Ed. 3, § 184; COLLIER, Ed. 8, p. 146; BRANDENBURG, § 189 and citations, and in such a case no duty devolves upon the trustee to set aside or provide for an exemption. It depends, then, upon the construction of the above four provisions of the Act, to determine the degree of particularity with which the articles of exemption are to be specified by the bankrupt in order to make his claim a proper one. The principal case adopts a very liberal construction, citing cases to support its view, but the greater number of authorities sustain the view that the method of specification being prescribed by the Act and the Supreme Court forms, requiring that the schedule of exemption be specifically itemized by the bankrupt, those prescribed forms must be followed; and until such a specified and itemized claim is filed, no duty rests upon the trustee to set aside articles as exempt, and all the assets having been sold, the right to exemption will be

deemed waived, and the statutory amount cannot be taken out of the proceeds of the sale. *REMINGTON*, §§ 491, 1052, 1056 and citations; *BRANDENBURG*, p. 130 and citations; *COLLIER*, Ed. 8, p. 144 and citations; *LOVELAND*, Ed. 3, 525 and citations; *In re Mathews*, 20 A. B. R. 369; *In re Groves*, 6 A. B. R. 730; *In re McClintock*, 13 A. B. R. 606; *In re Hoyt*, 119 Fed. 987, 9 A. B. R. 574; *In re Wunder*, 133 Fed. 821 (Pa.).

**BANKRUPTCY—TITLE TO PROPERTY OF BANKRUPT AFTER ADJUDICATION AND BEFORE ELECTION OF TRUSTEE.**—Execution was levied on personalty of X, who filed a claim of exemption with the sheriff, and later in the same day included the same personalty in a schedule of his property in a voluntary proceeding in bankruptcy begun by him. The property was later sold on execution sale. After his adjudication in bankruptcy, and before the election of a trustee, X began suit against the execution creditor and the sheriff for trespass, for the wrongful seizure and sale of property claimed exempt, to which the defendants pleaded that the pendency of the bankruptcy proceedings had so divested X of title as to all goods included in his schedules, that he could not maintain an action for damages for the unlawful sale thereof. *Held*, that though by § 70 (a) of the Bankruptcy Act the title to the bankrupt's property vests in the trustee by operation of law as of the date of adjudication, yet from the date of adjudication until the election of the trustee, the bankrupt himself is still the owner-in-trust, and has title, defeasible, but sufficient to authorize the commencement and maintenance of a suit. The trustee after election may begin a new action in his own name, or may intervene and avail himself of the rights and priorities acquired by the bankrupt; but if the trustee neither sues nor intervenes, there is no reason why the bankrupt should not himself continue the litigation. *Johnson v. Collier* (1911), 32 Sup. Ct. 104.

The Bankruptcy Act, while it provides that the date of the trustee's title becoming effective, after his appointment and qualification, is to be the date of adjudication, (§ 70) is absolutely silent as to where the title to the property is to rest between the date of adjudication and the appointment and qualification of the trustee, and there is but little authority on this question. It is said that "the correct view of the matter is that the condition of a bankrupt's property after adjudication and before appointment of a trustee is analogous to the condition of the personal property of a decedent before appointment of an administrator. Bankruptcy, like death, divests the owner of title. It becomes thereupon *in custodia legis*." *In re Frazin & Oppenheim*, 174 Fed. 713; see also *Keegan v. King*, 96 Fed. 758; *Abernathy v. Phillips*, 82 Va. 769. But in a late case the contrary is asserted. *Plaut v. Gorham Mfg. Co.*, 174 Fed. 852. The analogy, however, is not exact, and was not even considered in the principal case. Direct authority for the proposition that "in the interval between the adjudication in bankruptcy and the appointment of the trustee, the title to the property remains in the bankrupt," is to be found in *Gordon v. Mechanics etc. Ins. Co.*, 120 La. 441; 45 South. 384; also 15 L. R. A. (N.S.) 827. And remaining in him is such a title as to support an insurable interest in the bankrupt during that time. *Fuller v. Ins. Co.*, 184 Mass. 12, 67 N. E. 880; *Fuller v. Jameson*, 90 N. Y. Supp. 459; Affirmed 184 N. Y. 605; *Keeney v. Home Ins. Co.*, 71 N. Y. 396. But on the other hand it is said that the